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To: Microsoft ATR
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Subject: Microsoft Settlement

I believe the Government's proposed judgment against Microsoft is not in the public interest because it is inadequate to remedy the issues raised in the Government's complaint against the company, and does little to address some of the most serious aspects of the company's anti-competitive behavior. In the interest of brevity, I will limit my comments to what I see as the most serious weaknesses in the proposed judgment.

1. Predatory pricing in the form of bundling

Microsoft's attempt to destroy Netscape by giving away a product similar to Netscape's web browser, as mentioned in the Government's complaint against Microsoft, is only one instance of a pattern of anti-competitive behavior on Microsoft's part.

Microsoft pushes predatory pricing to an extreme by bundling with each release of Windows various application programs which are by no means necessary for the operation of Windows -- i.e. it drops the price of these applications to zero. The only rational explanation for Microsoft's willingness to give away this software, which must cost the company a fair amount to develop and maintain, is that by driving all competition out of business it will eventually be able to raise prices almost without limit. The company's current cash position, and the growth of its available cash (estimated to be over a billion dollars a month), is so large that it can easily continue underpricing (through bundling) even the strongest competitors indefinitely. Antitrust laws were passed to prevent exactly this kind of behavior. The Government's proposed judgment does not address this issue.

Even more worrisome is Microsoft's gradual encroachment into the computer hardware business. So far its business has been almost entirely software, but the company could easily leverage its Windows monopoly to take over the personal computer hardware market simply by modifying Windows not to work as well with any competitor's computers. Nothing in the proposed judgment would prevent this. (Microsoft is alleged to have played a similar trick by modifying an earlier version of Windows not to work correctly with a competitor's underlying DOS operating system.)

2. Use of Windows APIs with other operating systems

The Government's complaint prominently mentions the application software barrier to entry for operating systems, but the proposed judgment does not address this issue. A remedy would be to explicitly

prohibit Microsoft from acting against anyone who provides an alternative operating system on which Windows applications can run, i.e. an operating system which provides the same APIs as Windows.

3. Open source software as a potential competitor to Microsoft

The wording of section III.J.2 seems almost specifically designed to prevent any open source software from competing with Microsoft products, even though the open source software movement is one of the most promising developments and appears to be one of the few serious contenders as a Microsoft competitor. Since most open source software is available either free or at a very low cost, customers benefit from the availability of open source alternatives to Microsoft products.

4. Publishing of Windows operating system APIs

Section III.D of the proposed judgment requires Microsoft to publish APIs used by Microsoft Middleware, but makes no mention of other Windows APIs, in particular the operating system APIs ("system calls"). These are not currently published for Windows NT or Windows 2000, although equivalent APIs are published by most other operating system vendors. Microsoft claims that software developers do not need this level of detail because they should be using the published "Win32" API instead. However, there is ongoing suspicion that Microsoft application software has an advantage over competing software because it has access to the more powerful operating system functionality, rather than being limited to the functions provided by the Win32 API. A remedy would be to require Microsoft to publish the operating system APIs. Furthermore, other APIs which are currently published could be changed in future releases of Windows and might then become secret, thus cutting off the ability of competitors to sell applications that depend on the corresponding functionality. A remedy would be to require Microsoft to publish all APIs which are used by any Microsoft applications to perform any Windows function.

5. Description of file formats

Microsoft exploits its Windows monopoly to gain a monopoly in word processing and other "office productivity" software products by keeping secret the description of files created by its software. In particular, the distribution of text documents in Microsoft Word form is so common that many people naively refer to it as a "standard", even though the file format is not published and has never been sanctioned by any standards body. The effect is to require many people to buy not only Windows but also Microsoft Word just so they can read documents sent to them by other people. The result is that Microsoft's operating system monopoly allows it to monopolize the word processing business as well. A remedy would be to require Microsoft to publish the technical specifications of the file formats used by

Microsoft Word and any similar products.

6. Definition of operating system

In defending its anti-competitive behavior regarding applications software, Microsoft plays word games by defining "operating system" to include more and more application software. The company has even tried to present its web browser as a necessary part of an operating system -- an absurd claim, since operating systems preceded web browsers by decades. Microsoft can circumvent the sections of the proposed judgment regarding middleware simply by defining this as part of the operating system.

7. No punishment for violating the law

It is very disappointing that the proposed judgment imposes no penalties on Microsoft for its past violations of antitrust law. The unmistakable message is that crime pays; the worst that happens is that committing the same crime in the future becomes a bit more difficult, and even that only after years of delay.

Respectfully,

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